IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.NO.1993 of 2003 and Crl.M.P.No.2880 of 2003
and Crl.O.P.No.15029 of 2004

Crl.R.C.No.1993/2003

Bharath Sha .. Petitioner/Respondent

-vs-

State rep.by S.H.O
C.I.D.POlice Station
Pondicherry
(Crime No.354 of 1994) .. Respondent/Petitioner

Crl.O.P.No.15029 of 2004

M/s The Central Bank of India
rep. By its senior Manager
NO.1, Rve Law de-Louristan,
Pondicherry .. Petitioner

-vs-

1. Bharat Sha

2. State by
Station Offence Officer,
CID Police Station
Pondicherry .. Respondent

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The Criminal revision is filed against the common order passed in Crl.R.C.No.19 of 2003 on the file of the Second Additional Sessions Judge, Pondicherry dated 24.9.2003.

The Criminal Original Petition is filed against the order dated 24.9.2003 made in Crl.R.C.No.17 of 2003 by the learned II Additional Sessions Judge, Pondicherry modifying the order passed

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in Crl.M.P.No.2131 of 2003 in C.C.No.316 of 2001 on the file of the Judicial Magistrate No.2, Pondicherry.

For petitioner
(Crl.R.C.No.1993/2003) : Mr.A.D.Jagadish Chandran

For respondent
(Crl.R.C.No.1993/2003) : Mr.M.P.Thangvelu
Public Prosecutor(Pondicherry)

For petitioner
(Crl.O.P.NO.15029/2004): Mr.K.Rajasekaran

For respondents
(Crl.O.P.No.15029/2004): Mr.A.D.Jagadish Chandran-R1
Mr.M.P.Thangavelu
Public Prosecutor(Pondicherry)

COMMON JUDGMENT

The Criminal revision has been filed against the common order passed in Crl.R.C.No.19 of 2003 on the file of the Second Additional Sessions Judge, Pondicherry dated 24.9.2003. The revision petitioner is the accused No.3 in C.C.No.316 of 2001. The charge levelled against the revision petitioner in C.C.No.316 of 2001 is that under two fake telegraphic transfers one valued at Rs.21,31,600/- and another valued at Rs.16,90,900/- with a help of secret Bank cipher code book furnished by the accused No.5 herein and the accused No.A3/revision petitioner had sent those two fake telegraphic transfers from G.P.O. Bombay and deceived the defacto complainant Bank as if it has come from the Central Bank of India, Ville Parley Branch and the value of those two fake telegraphic transfers amounting to Rs.38,22,590/- credited into the fictitious account No.11356 in the name of fictitious person S.Dhana raj already been by the accused No.2 Mohan in the Central Bank of India, Pondicherry branch and the specific charge is under Section 420 of IPC r/w 34 of IPC against A3 for having cheated the defacto complainant Bank to the tune of Rs.38,22,590/-.

2. Before the trial Court, revision petitioner had filed Crl.M.P.No.2131 of 2003 in C.C.No.316 of 2001 under Section 451 of Cr.P.C. For the return of the fixed deposit receipts to the tune of Rs.26,00,000/- on furnishing bank guarantee.

3. The learned Judicial Magistrate had allowed the petition directing the petitioner/accused to receive the fixed deposit receipt for Rs.26,00,000/- from Central Bank of India, Pondicherry by way of interim custody till the disposal of the

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case after furnishing adequate and equal bank guarantee for the amount within a month and further to execute a bond for equal amount with one solvent surety for the like sum and also remit the amount whenever required by the Court. Aggrieved by the order of the learned trial Judge, the State has preferred Crl.R.C.No.19 of 2003 against the order passed in Cr.M.P.No.2131 of 2003 in C.C.No.316 of 2001 before the Second Additional Sessions Judge, Pondicherry. The learned first appellate Judge has allowed the revision thereby setting aside the order passed by the learned trial Judge in Crl.M.P.No.2131 of 2003 which necessitated the revision petitioner to approach this court by way of this revision.

4. Heard the learned counsel appearing for the revision petitioner and learned Public Prosecutor, Pondicherry. The learned first appellate Judge at paragraph 13 of his order has observed that the order has been passed in Crl.M.P.No.164/95 by a competent authority under Section 451 of Cr.P.C by way of interim custody of the fixed deposit receipt for Rs.26,00,000/- with the defacto complainant which was the subject matter in the revision No.19 of 2003. But this fact was not considered by over sight by the learned Judicial Magistrate, while passing order in Cr.M.P.No.2131 of 2003 while allowing Crl.R.C.No.19 of 2003. The learned trial Judge has observed that there cannot be an order for return of the fixed deposit receipts in favour of the revision petitioner while there is an order in favour of the defacto complainant in Crl.M.P.No.164/1995. The order passed by the learned trial Judge in realising Rs.26,00,000/- in favour of the revision petitioner is illegal, when the criminal case is pending against him, as correctly observed by the learned first appellate Court that while an order of interim custody by the competent authority is in force in favour of the defacto complainant, the order passed by the trial Judge to entrust Rs.26,00,000/- in favour of the revision petitioner cannot be sustainable warrant no interference from this Court. As stated by the learned counsel appearing for the defacto complainant, the revision petitioner is not going to lose anything because already the trial Judge has ordered that the amount is to be in fixed deposit, and it will accrue interest in favour of him. The only grievance of the revision petitioner is that criminal case in C.C.No.316 of 2001 is pending for nearly six years since the prosecution could not secure the other accused.

5. The learned Public Prosecutor (Pondicherry) also gives an undertaking that if the other accused could not be secured, he is ready to proceed with this accused/revision petitioner.

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6.Under such circumstances, I am of the view that only a direction can be given to the trial Court to expedite the trial in favour of the revision petitioner after splitting up the case against A3 and other appeared accused .

7.In fine, the revision is dismissed confirming the order of the Second Additional Sessions Judge in Crl.R.C.No.19 of 2003 on the file of the Second Additional Sessions Judge, Pondicherry. The learned trial Judge is directed to expedite the trial as against this revision petitioner who is A3 in C.C.No.316 of 2001 after following the procedure to dispose of the same within a period of two months from the date of receipt of a copy of this order in accordance with law. Consequently, connected Crl.M.P.No.2880 of 2004 is closed.

8.In view of the order passed in Crl.R.C.No.1993 of 2003 today, Crl.O.P.NO.15029 of 2004 is closed as unnecessary.
Sg

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.II Additional Sessions Judge
Pondicherry

2. - do - Thro The Principal Sessions Judge, Pondicherry

3. The Judicial Magistrate NO.2
Pondicherry

4.-do- through the Chief Judicial Magistrate, Pondicherry

5. The S.H.O
C.I.D. Police Station
Pondicherry

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6. The Public Prosecutor, Pondicherry

+ one cc to Mr. A.D. Jagadeesh Chandra, Advocate sr no. 26876
+ one cc to the Government Pleader sr no. 26878
+ one cc to Mr. K. Rajasekaran, Advocate sr no. 26716

TEJ(CO)
NM(26.04.07)

CRL.R.C.NO.1993/2003
Crl.M.P.No.2880/2004
& Crl.O.P.No.15029/2004

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